

this section or section 403c of this title shall be deemed to authorize such leases for the exploitation of any natural resources.

(Aug. 9, 1946, ch. 929, §1, 60 Stat. 962.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403c of this title.

§ 403c. Identity of lessor; period of lease

Such leases may be made only by the individual Indian owner of the land or by the authorized representatives of the tribe or group of Indians to whom the land belongs, subject to the approval of the Secretary of the Interior or his authorized representative. Restricted allotments of deceased Indians, when the heirs or devisees cannot agree on a lease, may be leased for them in the manner prescribed by section 380 of this title. No lease shall be made by or on behalf of any tribe for a longer period than is or may be authorized by the tribal constitution, charter, or ordinances. Nothing contained in this section or section 403b of this title shall be construed to repeal any authority to lease restricted lands which any Indian, Indian tribe, or official of the Department of the Interior would have in the absence of such sections.

(Aug. 9, 1946, ch. 929, §2, 60 Stat. 962.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403b of this title.

§ 404. Sale on petition of allottee or heirs

The lands, or any part thereof, allotted to any Indian, or any inherited interest therein, which can be sold under existing law by authority of the Secretary of the Interior, except the lands in Oklahoma and the States of Minnesota and South Dakota, may be sold on the petition of the allottee, or his heirs, on such terms and conditions and under such regulations as the Secretary of the Interior may prescribe; and the lands of a minor, or of a person deemed incompetent by the Secretary of the Interior to petition for himself, may be sold in the same manner, on the petition of the natural guardian in the case of infants, and in the case of Indians deemed incompetent as aforesaid, and of orphans without a natural guardian, on petition of a person designated for the purpose by the Secretary of the Interior. When any Indian who has received an allotment of land dies before the expiration of the trust period, the Secretary of the Interior shall ascertain the legal heirs of such Indian, and if satisfied of their ability to manage their own affairs shall cause to be issued in their names a patent in fee simple for said lands; but if he finds them incapable of managing their own affairs, the land may be sold as hereinbefore provided: *Provided*, That the proceeds derived from all sales hereunder shall be used, during the trust period, for the benefit of the allottee, or heir, so disposing of his interest, under the supervision of the Commissioner of Indian Affairs: *And provided further*, That upon the approval of any sale hereunder by the Secretary of the Interior, he shall cause a patent in fee to issue in the name of the purchaser for the lands so sold: *And provided further*, That nothing in this section shall apply to the States of Minnesota and South Dakota.

(May 29, 1908, ch. 216, §1, 35 Stat. 444.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

YAKIMA INDIAN RESERVATION, WASHINGTON

Special provisions for sale of interests of Indian minors in lands of the Yakima Indian reservation, in the State of Washington, whether by direct allotment or by inheritance, were made by act Mar. 27, 1908, ch. 107, 35 Stat. 49.

§ 405. Sale of allotment of noncompetent Indian

Any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any allotment by inheritance, may sell or convey all or any part of such allotment or such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest, under the supervision of the Commissioner of Indian Affairs; and any conveyance made hereunder and approved by the Secretary of the Interior shall convey full title to the land or interest so sold, the same as if fee-simple patent had been issued to the allottee.

(Mar. 1, 1907, ch. 2285, 34 Stat. 1018.)

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 406. Sale of timber on lands held under trust

(a) Deductions for administrative expenses; standards guiding sales

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the owner or owners with the consent of the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses to the extent permissible under section 413 of this title, shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior. It is the intention of Congress that a deduction for administrative expenses may be made in any case unless the deduction would violate a treaty obligation or amount to a taking of private property for public use without just compensation in violation of the fifth amendment to the Constitution. Sales of timber under this subsection shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things, (1) the state of growth of

the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs, (2) the highest and best use of the land, including the advisability and practicality of devoting it to other uses for the benefit of the owner and his heirs, and (3) the present and future financial needs of the owner and his heirs.

(b) Undivided interests

Upon the request of the owners of a majority Indian interest in land in which any undivided interest is held under a trust or other patent containing restrictions on alienations, the Secretary of the Interior is authorized to sell all undivided Indian trust or restricted interests in any part of the timber on such land.

(c) Unrestricted interests

Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary of the Interior is authorized to include such unrestricted interest in a sale of the trust or restricted Indian interests in timber sold pursuant to this section, and to perform any functions required of him by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deduction from such payments of sums in lieu of administrative expenses.

(d) Representation of minors and others

For the purposes of this Act, the Secretary of the Interior is authorized to represent any Indian owner (1) who is a minor, (2) who has been adjudicated non compos mentis, (3) whose ownership interest in a decedent's estate has not been determined, or (4) who cannot be located by the Secretary after a reasonable and diligent search and the giving of notice by publication.

(e) Emergency sales

The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the Secretary of the Interior without the consent of the owners when in his judgment such action is necessary to prevent loss of values resulting from fire, insects, disease, windthrow, or other natural catastrophes.

(f) Change in status without affecting contractual obligations

A change from a trust or restricted status to an unrestricted status of any interest in timber that has been sold pursuant to this section shall not affect the obligations of the Secretary of the Interior under any contract of sale that is in effect at the time such change in status occurs.

(June 25, 1910, ch. 431, § 8, 36 Stat. 857; Pub. L. 88-301, Apr. 30, 1964, 78 Stat. 187.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a-1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sec-

tions 104 and 107 of former Title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1964—Pub. L. 88-301 designated existing provisions as subsec. (a), substituted “land” for “allotment”, “owner or owners” for “allottee” in two places, and “their benefit” for “his benefit”, and provided for deductions for administrative expenses from proceeds of sales without violation of treaty obligations or Constitutional compensation provision, for consideration of needs and best interests of owners and heirs, and for standards guiding sales, and added subsecs. (b) to (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747 of this title; title 43 section 1617.

§ 407. Sale of timber on unallotted lands

Under regulations prescribed by the Secretary of the Interior, the timber on unallotted trust land in Indian reservations or on other land held in trust for tribes may be sold in accordance with the principles of sustained-yield management or to convert the land to a more desirable use. After deduction, if any, for administrative expenses under section 413 of this title, the proceeds of the sale shall be used—

(1) as determined by the governing bodies of the tribes concerned and approved by the Secretary, or

(2) in the absence of such a governing body, as determined by the Secretary for the tribe concerned.

(June 25, 1910, ch. 431, § 7, 36 Stat. 857; Pub. L. 88-301, Apr. 30, 1964, 78 Stat. 186; Pub. L. 100-580, § 13, Oct. 31, 1988, 102 Stat. 2936.)

AMENDMENTS

1988—Pub. L. 100-580 amended section generally. Prior to amendment, section read as follows: “The timber on unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses pursuant to section 413 of this title, shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as he may direct.”

1964—Pub. L. 88-301 substituted “timber” for “mature living and dead and down timber”, provided for sale of timber in accordance with principles of sustained yield or in order to convert the land to a more desirable use, provided for deductions for administrative expenses from proceeds of sales, made the Indians who were tribal members the beneficiaries instead of the Indians of the reservation, and struck out proviso which made section inapplicable to Minnesota and Wisconsin.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 564h, 697, 747, 1724 of this title; title 43 section 1617.

§§ 407a to 407c. Omitted

CODIFICATION

Section 407a, acts Mar. 4, 1933, ch. 275, § 1, 47 Stat. 1568; June 16, 1933, ch. 104, 48 Stat. 311; Mar. 5, 1934, ch. 46, 48 Stat. 397; May 6, 1936, ch. 340, 49 Stat. 1266, which related to modification of existing contracts for sale of tribal timber, was omitted on authority of act May 6,